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Before the
Federal Communications Commission
Washington, D.C.

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In the Matter of)
)
Calling Party Pays Service Option)
in the Commercial Mobile Radio Services)

WT Docket No. 97-207

COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.

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I. Introduction and Summary

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, files these comments on the issues raised in the Commission's Notice of Inquiry.¹ Omnipoint is a significant new entrant in broadband Personal Communications Systems ("PCS"); Omnipoint and its affiliates are small business licensees operating broadband PCS systems in the New York Major Trading Area and several other Basic Trading Areas, holding Broadband PCS licenses to serve over 96.5 million people in the United States. Omnipoint has developed a technically workable Calling Party Pays ("CPP") system but cannot implement it until Local Exchange Carriers (LECs) permit database access and agree to bill for CPP charges.

Omnipoint strongly believes that if the public is to have the full benefits of wireless telephony, CPP should become the norm in the United States, as it is throughout most of the world. For this to happen, the Commission must expeditiously take the steps outlined in these Comments to promote the wider availability of CPP as an alternative

¹ Calling Party Pays Service Option in the Commercial Mobile Radio Services, Notice of Inquiry, FCC 97-341, WT Docket No. 97-207 (Sept. 25, 1997; rel. Oct. 23, 1997) [hereinafter Notice of Inquiry].

service from which customers can chose. Only with seamless, nationally available CPP can the Commission achieve the goal of wireless telephony as a significant competitor to wireline telephony.

II. An Overview of CPP Issues

A. What Is CPP?

As the Commission notes, CPP is a service option that CMRS providers may elect to offer whereby a party originating a call (the “Calling Party”)—*from* any wireline or wireless phone and *to* a CMRS CPP service option subscriber—pays for *end-to-end delivery* of the call, just as in a normal land-to-land call today. The charge for end-to-end delivery of the call contains several components, including a fee received by the CMRS operator (the “CMRS Charge”).² Just as in a land-to-land call, the CMRS subscriber (the “Called Party”) incurs no charge to receive the incoming CPP call. Omnipoint here addresses several aspects of the CPP service option, including the Calling Party perspective and the required verification and billing and collection mechanisms that LECs must be ordered to provide on the same basis as they provide such services to themselves so as to prevent their monopolistic tendencies from continuing to stifle competition.

Reciprocal compensation, adopted in CC Docket 96-98 proceeding, is not CPP. Rather, reciprocal compensation recognizes that a CMRS operator performs a certain service in completing a land-originated call and should receive compensation from the LEC for that service. CPP deals with the compensation that a CMRS operator should

² The total charge paid by the Calling Party may include a charge paid to the local exchange carrier, the CMRS Charge and, depending upon the distance between the Calling Party and the CMRS network’s point of presence, a charge to an Interexchange Carrier. (The IXC element of the charge will usually be separately accounted for and billed by the IXC.) The total charge to the Calling Party is referred to as the CPP charge.

receive from the calling party for the end-to-end service of delivering a call to a mobile subscriber. Currently, reciprocal compensation is well under \$0.01 per minute, while CMRS charges run in the range of \$0.25 and \$0.50 per minute. The reciprocal compensation level is based upon the cost incurred by the dominant LEC in its wireline network and was never intended by the Commission as a measure of the CMRS operator's charges for airtime usage.

B. Informing the Calling Party of CPP

For a time, CPP Calling Parties should be informed of the fact that they will be charged a fee for placing a call to a CMRS CPP phone number as well as the magnitude of such charges. After a brief transition period, assuming the recommendations outlined below are adopted, the notice will not longer be necessary and can be dropped. Several alternative mechanisms (discussed in Section II.D., *infra*) exist to advise Calling Parties of the charges associated with their CPP calls. For a variety of technical and operational reasons detailed later in these Comments, Omnipoint believes that the public interest would best be served by the Commission's allocation of separate Numbering Plan Area (NPA) codes to each national scope CMRS carrier proposing to offer a CPP service option, with each such NPA restricted exclusively to use by that CMRS provider in connection with its CPP service option.³ Smaller CMRS operators would share an NPA. We suggest the threshold for a dedicated NPA should be a covered population of 50 million.⁴

³ Where Incumbent LECs offer CPP service to CMRS carriers it is often with the requirement that the CMRS carrier establish a dedicated NXX so that they, the originating carrier, can easily determine that the caller is making a CPP call. A dedicated NPA is simply an extension of that concept with the added advantage of notification to the calling party.

⁴ Omnipoint recognizes that such an NPA allocation may appear to be in tension with the Commission's decisions in Second Report and Order and Memorandum and

C. A Carrier's Perspective of the CPP Process

A successful CPP call has three logically separate elements:

- **First**, the Calling Party's number must be verified as a legitimate number to which CPP charges may be billed.
- **Second**, in the event that the Calling Party's number is one that cannot accept CPP charges, *e.g.*, a pay-phone, appropriate steps must be taken to deal with the call, *e.g.*, allow it proceed through a credit card transaction.
- **Third**, in the case where the Calling Party's number is verified, the correct amount must be billed to the Calling Party and remitted to the serving CMRS operator.

1. Verification that the Calling Party's Number Will Accept the CPP Charges

A critical element of CPP is to verify that the Calling Party will, in fact, accept CPP charges. Some classes of Calling Parties may be barred from accepting CPP charges, such as coin phones, where there is no mechanism to bill back to such a station. Either the CMRS operator or the LEC can accomplish CPP verification.

The most logical method of verifying that the LEC wireline Calling Party is of a class that accepts CPP calls is for the Calling Party's local carrier to query its internal switch database (Line Class Code) to determine whether the originating customer is calling from a billable number. The calling number status is then forwarded to the CMRS operator along with other call-setup information for the CPP call. Access to the Line

(Footnote continued from previous page)

Opinion and Order, 11 FCC Rcd. 19392 (1996). However, NPAs for CPP were not expressly considered in that decision, nor were the pro-competitive effects of successful CPP implementation.

Class Code is an inherent feature of current CPP services offered by several of the Incumbent Local Exchange Carriers for non-CMRS purposes and may easily facilitate CMRS CPP services.

Alternatively, but at much higher cost and with greater network complexity, the CMRS provider may access the applicable Line Information Database ("LIDB"), either through its own, or through a third-party service provider's, Intelligent Network, a process known in the industry as a "database dip."

The normal rules of network efficiency favor making database dips as close to the source of the data as feasible, and therefore favor access to the Line Class Code information.⁵ However, if the LIDB is open for access by CMRS carriers, either the LEC or the CMRS operators may perform the verification query.

While, verification is generally achieved through a LIDB query, the LIDB databases currently only cover fixed telephones; hence a CPP call originated from a wireless phone originates a CPP call is not capable of verification through a LIDB dip. Omnipoint urges the Commission to consider determining alternative mechanisms that either currently exist or must be implemented to allow CMRS providers to verify billing

⁵ The Line Class Code database is associated with each serving end (Class 5) switching center serving LEC customers. The LIDB databases aggregate data from multiple switching centers. There are multiple LIDB databases, some of which include independent LEC information. However, not all independent LECs participate in LIDB databases. By directly accessing the Line Class Code database, less opportunity for error exists. However, the extent to which LECs wish to open their Line Class Code database for dips by CMRS operators is not known. Omnipoint assumes, therefore, that CMRS operators would only access LIDB data for number verification.

for CPP calls from wireless phones.⁶ The easiest such mechanism may be for wireless operators to add their customer line information to an existing LIDB database. Alternatively, the wireless carriers could develop their own LIDB-style database(s).

2. Handling Calls that are not Verifiable or From a Billable Calling Party

Upon querying the LIDB in connection with any CPP call, a CMRS provider may find that the Calling Party's local telephone number cannot—or will not—accept billing for the CMRS Charges. Or, the Calling Party's number may not be in the LIDB, as it belongs to a non-participating independent LEC. The Commission should examine the alternative CPP call treatments available to a CMRS provider in these circumstances.

Omnipoint has identified at least four options for handling an incoming CPP call where it cannot be verified that the Calling Party's number will accept billing for the CPP Charges. The CMRS provider could: (1) complete the CPP call and sustain the loss associated with the CMRS costs for carrying the call; (2) refuse to complete the call; (3) bill the CMRS Charges to the Called Party; or (4) provide the Calling Party with alternative billing options, such as a commercial credit card or calling card. None of those options alone is sufficient, however, to allow a CMRS provider's CPP service option to be competitive with wireline services. Only a combination of three, or even all four, of these options is a reasonable implementation from the perspective of both customers and CMRS operators. More importantly, of course, these options are not a substitute for CPP billing and collection by the LECs. Rather, they are useful ways of

⁶ It is necessary for a CMRS provider to obtain such verification of billing to other wireless telephone numbers because not every active wireless telephone number is necessarily a billable number. For example, Omnipoint's "Prepay Plan" wireless customers would not be able to be billed for outgoing calls placed to CPP Called Parties.

dealing with a small minority of calls that are, for whatever reason, not eligible for billing and collection through the serving incumbent LEC.

3. Billing and Collection for CMRS Charges of the Call

For effective CPP deployment, the CMRS provider must be confident that it can bill the CMRS Charges to, and collect them from, the Calling Party. Since the CMRS operator normally has no direct relationship with the Calling Party, the LECs must be required to provide the CMRS carrier with billing and collection service to bill those LEC customers that are CPP Calling Parties.⁷ Although several LECs currently offer a “CPP service option” to CMRS carriers, as described in Section III.A.1 *infra*, such an option is neither necessary nor sufficient to allow a CMRS carrier to offer a nationwide CPP service. Therefore, as discussed below at Section III.A.2, the Commission should find that the billing and collection service which is necessary for CMRS carriers to bill CPP Charges to LEC customers, is a common carrier service subject to the requirements of Title II of the Communications Act; alternatively, the Commission should assert its Title I jurisdiction to mandate LEC billing and collection services.

Several LECs currently refuse to offer a billing and collection service for CPP Charges to CMRS carriers.⁸ In addition to directing the LECs to offer a CPP billing and collection service, the Commission should make the nondiscriminatory offering of such services a precondition to any LEC’s providing inter-LATA interexchange services or to

⁷ The CPP Calling Party may have to use an IXC to reach the CMRS network point of presence. This circumstance could argue for billing, in such a case, through the IXC instead of the LEC. It would be much more consistent, however, to always have the CMRS Charge billed and collected by the LEC. Further, there are fewer LECs than IXCs and LECs have proven to be more stable business enterprises.

⁸ Omnipoint has been refused CPP services by SBC, Bell South, Bell Atlantic North (formerly NYNEX) and SNET. See discussion at note 23, *infra*.

any LEC their own (or their affiliates') CPP service, either to end-user customers or on a wholesale basis to carriers. Establishing a CPP billing and collection requirement for LECs is an appropriate measure given that CPP service will be fundamental to enabling CMRS providers to provide a comparable and viable alternative to incumbent carrier services.

III. **Specific Responses to Notice of Inquiry**

Omnipoint presents the following to specifically respond to the issues raised in the Notice of Inquiry.

A. Current Availability of CPP (Notice of Inquiry, ¶¶ 6-9)

1. Required LEC Billing and Collection Services

While Omnipoint currently does not offer a CPP service option, it is prepared to do so as soon as it secures the necessary billing and collection arrangements with incumbent LECs, as described above. Omnipoint believes that no CPP service option can be viable unless it is offered in such a manner that CPP calls can be placed from—and billed to—anywhere within the United States.⁹

The Commission correctly notes that several LECs currently offer a “CPP service option” to CMRS carriers¹⁰. It should also be noted, however, that a CMRS carrier theoretically need not obtain the currently offered LEC “CPP service option” in order to provide its CMRS subscribers with CPP service. The current LEC “CPP service options” generally bundle (i) Intelligent Network services, including Calling Party notification and

⁹ It is, of course, highly desirable that international-originated calls also participate in CPP. At least in the short run, a simplified process may be necessary. Omnipoint suggests that the CMRS operator split the US domestic termination portion of the international call revenue 50% - 50%. At a later date, it may be feasible to negotiate a special international rate to CMRS NPA/NXXs.

¹⁰ Notice of Inquiry at ¶ 6.

verification of the ability to bill the Calling Party's local calling number, and (ii) billing and collection services.¹¹ A CMRS operator, however, has no technical reason to employ a LEC to perform the Intelligent Network (IN) component of a CPP service option. On the contrary, CMRS providers may have their own IN functionality, or they may obtain the necessary functionality through a third-party service provider. Using a cost-benefit analysis, the CMRS operator should be able to choose among IN providers, including the LEC, its own IN, and third party providers. A LEC should not be able to offer service only on an "all or nothing, take-it-or-leave-it" basis. Regardless of who performs IN functions, a CMRS carrier does depend on the LEC for the CPP billing and collection services within that LEC's service area. Such bundling is not consistent with the Commission's pro-competition policies and the Commission should accordingly require LECs to unbundle IN from billing and collection services, and to unbundle and separately price components of IN, e.g., LIDB access, Calling Party notification, etc.

Furthermore, each LEC's "CPP service option," on its own, is inadequate to allow a CMRS provider to offer a CPP service option that allows incoming CPP calls to originate from Calling Parties anywhere in the nation. Of course, any LEC's "CPP service option" extends only to that LEC's customers. For a CPP service option to be attractive and useful to customers—in fact, for such a service even to be viable—it must work with CPP calls received from anywhere in the United States. It is unreasonable to force a CMRS provider offering CPP to choose either (a) private, disparate contracts for a LEC "CPP service option" with hundreds of separate LECs,¹² or, (b) simply foregoing the

¹¹ In Omnipoint's experience, CPP services are filed as tariffed offerings with the various state utility regulatory commissions, with the unworkable potential for a "patchwork" of different rates and terms and conditions in each state.

¹² The Commission, reports 1,428 local exchange telephone companies in the 50 states as of June 30, 1996. *Trends in Telephone Service, 1997* (March 1997) at 30.

ability to collect charges from Calling Parties within a LEC's region. Promulgation of a set of uniform federal CPP regulations avoid these impossible options, and greatly promote nationwide, seamless CPP service.

In light of the foregoing, existing LEC "CPP service option" solutions anti-competitively bundle necessary and optional services, and are both inadequate and unnecessary to allow CMRS providers to offer competitive CPP service options. To rectify these problems, Omnipoint believes that the Commission should take the following steps:

(a) Establish Interim CPP Billing and Collection Rules and Standards.

The Commission should act immediately to implement an interim CPP billing and collection solution that would require all LECs to: (a) accept from CMRS carriers, on a nondiscriminatory basis, information relating to CMRS Charges incurred by the LECs' customers, (b) include such CMRS Charges on their customers' bills and (c) remit all funds collected in connection with such CMRS Charges to the CMRS provider.¹³ To avoid second-class status for CMRS access service and to minimize the cost of the billing and collection service, the Commission should require LECs to include CMRS CPP charges in the main portion of the LEC customer's bill, and not permit it to be segregated

¹³ The industry standards group Alliance for Telecommunications Industry Solutions ("ATIS") Carrier Liaison Committee ("CLC") Ordering and Billing Forum ("OBF") has established data format standards for exchange of billing information.

onto additional pages.¹⁴ Additionally, LECs should be precluded from interfering with the pricing schemes of CMRS carriers in any way.¹⁵

It would also encourage more rapid deployment of CPP service for the Commission to establish an interim ceiling price that a LEC may charge for billing and collection, as well as establishing a maximum payment cycle.

(b) Establish Long-term Billing and Collection Policies

In order to promote the most robust CMRS competition with wireline services possible, CPP Calling Parties should receive a single “all inclusive” price for CPP calls that includes both the CMRS Charge and any other charge made by the LEC for the call, *e.g.*, any message unit charges.¹⁶ These charges should, therefore, be integrated and included on the LEC's CPP bill as soon as feasible.

After the interim solution described above is in place, the Commission should require all LECs to provide a least-cost wholesale billing and collection service on a nondiscriminatory “most favored customer” basis to any interested CMRS provider, and to promptly remit to the CMRS provider all collected amounts in excess of the LEC's costs incurred in: (i) carrying the call to the CMRS provider and (ii) providing the billing

¹⁴ Although the format and content of the CPP billing data furnished by CMRS operators to LECs will resemble that of IXC's, the clear distinction in service and regulatory position between IXC's and CMRS operators dictates different billing presentation and format by LECs for the two types of charges.

¹⁵ The CMRS operator remains responsible for determining the CMRS Charge for each call and the LEC will not be responsible for computing the CMRS portion of the price of any particular call. The LEC simply administers the price established by the CMRS operator.

¹⁶ As stated earlier, any IXC charges will likely be separately shown or even separately billed.

and collection service.¹⁷ In conjunction with this long-term solution, LECs should be required to continue to follow the suggested interim step of integrating fully and seamlessly all CPP Charges with the customer's other regular LEC charges, and not to segregate them on the LEC customer's bill. This is the method by which CPP service options are billed successfully throughout the world, and it will allow CPP to have the most effective pro-competitive effects in the United States as well as to provide customers with options to increase the perceived value of wireless services.

2. CPP Billing and Collection Services Should Be A Mandated LEC Service Offering

Adequate LEC billing and collection services for CMRS CPP service are an essential component if CPP service is to support more fulsome competition of wireless and wireline telecommunications services. Omnipoint believes that LEC billing and collections services for CPP should be deemed a Title II common carrier service, or adjunct to such service; alternatively, Title I of the Communications Act provides the Commission with ample authority to mandate billing and collections services that support CPP.

While the Commission's 1985 Billing and Collection Order¹⁸ detariffed billing and collection services provided by LECs "to an interexchange carrier,"¹⁹ the Commission could not possibly have anticipated over twelve years ago the significance

¹⁷ These charges should be no more than the local interconnection charge of the LEC, and the best wholesale billing and collection price the LEC has made available to any other entity.

¹⁸ Detariffing of Billing and Collection Services, CC Docket No. 85-88, Report and Order, 102 F.C.C.2d 1150, on recon., 1 FCC Rcd 445 (1986) (Billing and Collection Order).

¹⁹ Id. at n.2.

of LEC billing and collections to the survivability of such an essential CMRS service as CPP. Therefore, the Billing and Collections Order is properly limited to the issues before the Commission at the time of that decision: IXC billing issues.

Significantly, and unlike interexchange carrier billing and collection services, the Calling Party of a CPP call is not a customer of the CMRS carrier. LEC billing for CPP is distinguishable from LEC billing for IXC services because the IXC has access to customer information, has an existing customer and contractual relationship with the Calling Party end-user, and may hire non-LEC third party vendors for billing and collection service is certainly a vestige of the LEC's traditional "bottleneck." Thus, the CMRS operator offering a CPP service is not free to obtain a collection service from third-party provider,²⁰ and the LEC may obtain a competitive advantage vis-a-vis wireless carriers through the denial of functional billing and collection services, merely by virtue of its historical monopoly access to customers connected to the local exchange. Therefore, since LEC billing and collections is an essential element in the overall offering of CPP service, it is itself a necessary and integral part of the CPP "communications" service.²¹

Subsequent Commission decisions support that billing and collection services for CMRS CPP charges to LEC customers should be regulated as common carrier services.

²⁰ Billing and Collections Order, 102 F.C.C. at 1168-69.

²¹ Cf., "[C]ertain billing and collection services offered by local exchange carriers (LECs) to interexchange carriers (IXCs) are not common carriage because such services do 'not allow customers of the service . . . to communicate or transmit intelligence of their own design and choosing,' and because such services can be offered by non-communications entities such as credit card companies." Interconnection and Resale Obligations Pertaining to CMRS, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462, 9468-69 (¶ 10) 1996 (footnotes omitted) (quoting Billing and Collection Order).

In the 1991 Cincinnati Bell Final Order, the Commission held the activities and services associated with generating, maintaining and providing access to calling card validation information for LEC joint use cards are an integral part of exchange access and therefore are subject to the requirements of Title II of the Communications Act.²² Again, in the Southwestern Bell Waiver Order, LEC provision of LIDB services as tariffed rate elements and rate structures was found to be another method of providing Title II access services.²³ These orders support that LEC billing and collection services for CPP are common carrier communications services because the LEC customer is able to access a foreign CMRS network to communicate messages of the user's own choosing to CMRS subscribers.

Alternatively, the Commission's Title I authority should be exercised to require LECs to offer appropriate billing and collections services for CPP. As the Commission decided in the Billing and Collections Order, the Commission's Title I "powers would be sufficient to enable us to regulate exchange carrier provision of billing and collection services" ²⁴ In contrast to the situation faced by the Commission in the Billing and Collection Order, however, the exercise of that jurisdiction is now fully warranted to promote the viability of a new nationwide CPP service. 47 U.S.C. § 157(a). ("It shall be the policy of the United States to encourage the provision of new technologies and services to the public.") For example, in the Billing and Collection Order the Commission declined to exercise authority because adequate market forces, i.e.,

²² Cincinnati Bell Telephone Co., CC Docket No. 89-323, 6 FCC Rcd 3501, 3504, (1991).

²³ Southwestern Bell Telephone Company, Memorandum Opinion and Order, 6 FCC Rcd 6095 (1991).

²⁴ Billing and Collection Order, 102 F.C.C. 2d at 1169.

alternative billing arrangements, were available for IXC's to bill their customers. With CPP, however, as discussed above, the CMRS operator does not have a goodwill, or even a contractual, relationship with the customer and so the current market leaves CMRS carriers without any viable option to the LEC's billing and collection service.

It is appropriate for the Commission to assert its jurisdiction now in order to promote viable wireless CPP service. In recent decisions, the Commission has noted the importance of LEC billing and collections as a potential competitive issue. For example, in the Non-Accounting Safeguards Order,²⁵ the Commission noted that billing and collections services should be a part of the Section 271(c)(1) services that RBOCs must offer on a nondiscriminatory basis to other carriers. The CMRS CPP service can greatly improve wireline and wireless competition, if the Commission recognizes the critical component of LEC billing and collections in this context.

As discussed above, the Commission should direct the LECs to offer a billing and collection service to promote CMRS competition. Furthermore, the Commission should establish the offering of such billing and collection services on a nondiscriminatory basis as a precondition to any LEC's entry into the market for InterLATA services,²⁶ as well as a prerequisite to a LEC's provision of their own (or their affiliates') CPP service, either to end user customers or on a wholesale basis to carriers. Establishing CPP a billing and

²⁵ Implementation of Non-Accounting Safeguards of Sections 271 and 272, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, 22007-08 (1996).

²⁶ In approving any InterLATA services application, Section 271 requires the Commission to find that "the requested authorization is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C). Because CPP is essential for vibrant wireless competition to an RBOC's interLATA service, the Commission should expect an RBOC to implement functional billing and collection services for CMRS CPP prior to the RBOC's entry into InterLATA services.

collection requirement for LECs is an appropriate measure given that CPP service will be fundamental to enabling CMRS providers to provide a viable alternative to incumbent LEC service.

Several large LECs currently refuse to offer a billing and collection service for CPP Charges to CMRS carriers.²⁷ As discussed above, the Commission should direct all LECs to offer a billing and collection service to promote CMRS competition. Furthermore, the Commission should establish the offering of such billing and collection services on a nondiscriminatory basis as a precondition to any LEC's entry into the market for interexchange services as well as a prerequisite to a LEC's provision of their own (or their affiliates') CPP service, either to end user customers or on a wholesale basis to carriers. Establishing CPP a billing and collection requirement for LECs is an appropriate measure given that CPP service will be fundamental to enabling CMRS providers to provide a viable alternative to incumbent LEC service. This may be as

²⁷ Omnipoint has been unable to reach CPP billing and collecting arrangements with four large LECs:

- SBC—Does not offer billing and collecting services to Omnipoint. It will allow (for a charge) access to its customer database so that Omnipoint can send each Calling Party an individual bill. (Note that Pacific Bell had earlier proposed to offer CPP service to AirTouch Cellular but the California Public Utilities Commission did not approve the service. After its acquisition by Southwestern Bell, Pacific Bell is following the SBC policy.)
- Bell Atlantic— Bell Atlantic offers CPP in the old (pre-NYNEX merger) states and in all NYNEX states except New York. In New York, Bell Atlantic is seeking a set-up charge exceeding \$500,000 to cover changes to billing software. Note, however, that Bell Atlantic currently is believed to provide IXC billing and collection services in New York.
- Bell South—Does not offer billing and collection services but is willing to discuss it with Omnipoint.
- SNET—Does not offer billing and collection services.

simple as adding CMRS customers to the existing LIDB databases. If adding CMRS customers to the existing LIDB database is not feasible, the CMRS operators will need to develop a functionally equivalent database.

3. Market Acceptability and Desire for CPP

The Commission seeks comment as to the reasons that CPP is not offered more broadly, and also whether new CMRS competition is likely to result in a broader availability of CPP.²⁸ Incumbent CMRS carriers are reluctant to offer CPP due to the high costs of implementing a service with LEC-by-LEC negotiations, individual state regulatory requirements for notification announcements,²⁹ Calling Party restrictions such as blocking,³⁰ and the need to pay LECs for database access and billing and collection services. These costs translate into significantly lower per-call margins since Calling Party rates for CPP must remain reasonable if the service is to be attractive³¹. (The norm in Europe is for identical charges to apply in the mobile-to-land and land-to-mobile directions.)

²⁸ Notice of Inquiry at ¶ 8.

²⁹ Omnipoint's recommendation of assigning CPP-specific NPAs (infra), similar to the Service Access Codes (800, 500, 700, etc.) will alleviate the need for costly and inconvenient preamble announcements for CPP services.

³⁰ It would be confusing to customers to have differing requirements to make CPP calls on a state-by-state basis, particularly for a CMRS operator such as Omnipoint with multi-state operations. Further, since the CPP messages are implemented at the CMRS operator's switching center, each of Omnipoint's switching centers could be forced to comply with 50 inconsistent state requirements on a call-by-call basis. The Commission should accordingly pre-empt state regulation of these aspects of CPP service.

³¹ Although CPP relieves the CMRS customer of the costs for carrying the incoming call, the CMRS customer is unlikely to accept a service that carries an excessive cost to the Calling Party.

Since the per-call margins on CPP service are lower than for conventional mobile-pays-airtime billing, Incumbent CMRS operators have little incentive to offer CPP. Indeed, existing CMRS operators may view CPP as a net revenue loss. New CMRS operators, attempting to establish themselves in an increasingly competitive marketplace, however, may have a different view of CPP. The new CMRS operators see CPP as a way to more quickly build a customer base, thereby resulting in a net economic benefit, even if the net margin per CPP call is lower than for traditional mobile radio billing practices. Until new entrant CMRS providers initiate CPP service as an effective competitive "wedge" to enter the market, incumbent CMRS carriers have little incentive to provide the service. In addition, as we have previously stated, CPP service is not available because no CMRS carrier can effectively provide a nationwide CPP service option until such time as all LECs are mandated to provide functional billing and collection services. Since many of these LECs are affiliated with incumbent CMRS carriers, lack of a nationwide, cost-effective methodology of offering CPP is in the broader corporate interest of these LECs. It is not surprising therefore that in an industry with existing cellular operations dominated by LEC affiliates that CPP has not emerged through normal market forces.

4. Charges for Incoming Calls and First Minute Free

The Commission also requested comment "as to whether recent developments" create sufficient market incentives for CMRS carriers to refrain from charging their own subscribers for incoming calls.³² Omnipoint submits that airtime usage of a CMRS system, whether it is the first or a subsequent minute and whether the usage is an inbound or outbound call, has a certain cost associated with it. A CMRS carrier that fails to at least

³² Notice of Inquiry, at ¶ 8.

recover its costs will not long be in business. Therefore, waiving charges for the first incoming minute of use is primarily a marketing tool, and its purpose is to attract new customers and to encourage other billable use by the wireless subscriber. Additionally, the operator counts on the fact that many incoming calls will exceed one minute, and so generate additional revenue. Of course, CMRS operators should be free to offer a wide variety of pricing plans—including those with “free” first incoming minutes—but the Commission should be aware that such marketing plans in no way imply that a CMRS operator incurs zero cost for the first minute of an incoming call.

While the Commission asserts that “cost recovery is the sole or primary reason for CMRS carriers to offer CPP,” market incentives, recent or otherwise, do not necessarily encourage CMRS carriers to refrain from charging their own subscribers for incoming calls. To stay in business, CMRS carriers must recover the fixed and variable costs involved in delivering services through their wireless networks. The carrier relies on subscriber revenue to remain competitive and profitable. Especially new entrants, faced with government-obligations for the repayment of license fees, and the high costs of building brand-new networks, cannot simply forego incremental earnings. Those CMRS carriers offering free first minute of incoming call pricing and other incentive pricing have simply made the decision that, in the long term, these incentives will generate more net income than in their absence.

Cost recovery, however, is neither the sole nor the primary reason for CMRS carriers to offer CPP. After all, existing CMRS carriers have prospered in the past without CPP. CPP is critical in today's environment, and in the future, because it enables a CMRS carrier, particularly a new entrant, to offer potential customers a differentiated service option that ultimately results in greater competition in the broad marketplace for telecommunications services. Moreover, for the consumer, CPP makes the wireless telephone a closer substitute for the telephone at home or on a desk, where traditionally only outgoing calls result in a usage charge. Because CMRS customers will seek the

service offering that provides a reasonable cost for receiving incoming calls, the reason CMRS providers would offer CPP is to attract new customers, and increase revenue from existing customers. Of significance to the Commission, CPP translates into greater competition in the telecommunications market place.

B. Demand Stimulating Effects (Notice of Inquiry, ¶¶ 10-14)

Current demand for CMRS is artificially hindered by subscribers' unwillingness either to keep their wireless phones turned on³³ or to freely distribute their wireless phone numbers due to the charges that will be incurred from incoming callers. In other words, every CMRS sale requires for the customer to accept that "you pay for both the calls you make, and the calls you receive." Thus, the predominant consumers' view of CMRS is as an outgoing communications service. As a result, even existing CMRS subscribers refrain from widely distributing their wireless phone number because of the incoming usage charges that they may incur. In fact, many consumers consider CMRS primarily as an emergency-use tool and never gain an understanding of the benefits of the advanced services and features available with CMRS technologies.

In Omnipoint's New York/New Jersey network today, for example, between 70% and 80% of calls are mobile-originated, consistent with figures reported by other US CMRS systems, as the Commission observed. However, in Omnipoint's experience, European cellular systems run around 55% mobile-to-land and 45% land-to-mobile calls. Indeed, Omnipoint is familiar with at least one European cellular network where more than 50% of wireless calls are land-to-mobile. In lesser developed European countries,

³³ Battery capacity, once an incentive to turn off wireless phones when not actively engaged in an outgoing call, is no longer an issue. New battery technologies and new phone electronics have significantly extended battery life. Today, phones with sixty hours of standby time and two-plus hours of talk time are not uncommon.

with poor fixed telephone systems, such as Portugal or Poland, the land- and mobile-originated ratio don't differ much from that seen in Germany or Sweden. Instead, one sees a higher proportion of mobile-to-mobile calls, as any call that transits the public switched network has difficulty, whether as a mobile-originated or mobile-terminated call. Unfortunately, specific calling data is generally held closely by the operators and is not available on a "for attribution" basis. Hence, Omnipoint is unable to provide more definitive statistics for European systems.

Only when consumers begin to have an increased comfort in leaving their wireless devices active at all times will CMRS providers have a reasonable opportunity to penetrate the market to complement—and eventually compete with—LEC exchange service. In Europe, where wireless carriers have their own area codes and the local exchange carriers are required to bill the wireless carriers' charges, wireless services have become ubiquitous and have long lost any sense of being a luxurious or elite offering. Indeed, in Sweden, for example, Omnipoint understands that most new telephone subscriptions involve a wireless phone. Omnipoint is confident that such a modification of consumer behavior will occur in the United States as well.³⁴

³⁴ The Commission correctly notes that few, if any, European countries have "free" or unlimited local calls. In most countries, prices are established for a phone "unit." The number of seconds of conversation available for each "unit" varies with the distance. Local calls usually provide 360 to 600 seconds of conversation per unit. At the end of the month, the local phone bill states usage of X units and the total resulting price. It resembles an electric bill in the US, with so many kilowatt hours consumed at so many cents per kWh. The availability of a detailed call breakdown varies by country and by serving switch technology within a given country.

It is not necessarily the case, however, that cellular calls are disproportionately expensive or cheap in Europe compared with a domestic long distance call. The Mannesmann D2 "Classic" peak hour tariff price for a mobile-to-land call is DM 1.29/minute, for a mobile located anyplace within Germany to a land station located anyplace in Germany. This is comparable to the price of the longest long distance step land-to-land call in Germany.

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C. Pricing Issues (Notice of Inquiry, ¶¶ 15-19)

The Commission raises the issue of the potential decrease of consumers' acceptance of CMRS as a close substitute for wireline telephony because of potentially increased incremental costs for the wireline consumer who places a "local call" to a CMRS phone as opposed to a wireline phone.³⁵ This assumption of Calling Party reaction fails to account for the fundamental differences in calling to a wireline versus a CMRS customer. When a "local call" is placed to a wireline customer, the caller is aware that, if the Called Party is not in their home (or other wireline location), the call will not be completed. When a call is placed to a CMRS customer, however, the caller knows that the call will be placed to the CMRS customer's wireless phone, *wherever the CMRS customer is located* (within an active service area).³⁶ The concept of a CMRS "local call"

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Although both cellular calls and landline calls are more expensive in Germany than other European countries, the general relationship, that a cell call is roughly the same price as a maximum step long distance call, holds broadly true. It is also the case that in almost every European cellular system, the price of a call includes any domestic long distance charges.

In European countries, the mobile operator establishes the land-to-mobile price. The price is charged and billed by the telephone operator to the calling party (including coin phones). However, if the billing telephone operator has implemented only unit-based pricing (as is the case in most countries) the mobile operator must re-cast its land-to-mobile tariff into a unit-based price. Thus, there may be some slight difference between the price of a land-to-mobile and a mobile-to-land call due to different billing methodologies.

³⁵ Notice of Inquiry, at ¶ 18.

³⁶ Roaming must also be considered if the CMRS subscriber is served by a different operator. As implemented in Europe, CPP provides that the calling party pays only the normal land-to-mobile charge. The mobile customer is responsible for paying for the "roaming" charges imposed by the foreign network, as well as any landline charges to take the call from the home network to the foreign network. Omnipoint assumes that a similar policy would be necessary in the US for CPP; all roaming and IXC charges

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